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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/934,349      | 08/21/2001  | Roy McGee            | 776                 | 7836             |

7590

04/17/2003

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EXAMINER

PELHAM, JOSEPH MOORE

ART UNIT

PAPER NUMBER

3742

DATE MAILED: 04/17/2003

/o

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/934,349

Applicant(s)

MCGEE ET AL.

Examiner

Joseph M Pelham

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. The examiner acknowledges Applicant's submission of the supplemental appeal brief filed 1/30/03. In accord with Office policy, the examiner of record has again discussed the current rejections in an appeal conference with two other senior examiners. Our conference concluded that prior art should be cited in support of the rejection of claim 4, the "plug capable of connecting to a power receptacle," implicating AC power in view of the specification, and that the balance of the rejections are proper and should be maintained.

***Prosecution is hereby reopened.*** Claims 1-6 are pending

***Specification***

2. The disclosure is objected to because of the following informalities: at page 6, lines 4-6, and page 7, lines 4-6, reference is made to power plug 32 being capable of connecting to a power receptacle 35 via power cord 39, a power pack 37, step-down transformer 60, and connector 62, none of which is shown in the Figures.

Appropriate correction is required.

***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "power plug...capable of connecting to a power receptacle" must be shown or the feature canceled from the claim. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Objections***

4. Claim 1 is objected to because of the following informalities: at line 5, "heating elements" is plural, yet only a single heating element is disclosed. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6075229 to Vanselow.

Referring to Figures 1-4, Vanselow discloses the claimed invention exactly as claimed, including a mug 30, which is a "generally standard drinking vessel" 30 because it is cylindrical and stands on its own, lid 34, base 12, 20, and 12 volt DC adapter plug 47 for use in an automobile.

***Claim Rejections - 35 USC § 103***

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vanselow in view of U.S. Patent 6121585 to Dam.

The heated drinking mug recited in claim 4 differs from Vanselow only in calling for the option of an AC power source. Dam discloses, in Figures 1-5 and column 8, lines 30-39, a heated drinking mug utilizing either DC or AC power. It would have been obvious to adapt the mug of Vanselow so as to also accommodate AC power, to allow use at home as well as in a car.

7. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vanselow in view of U.S. Patent 5023433 to Gordon.

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Vanselow discloses a continuously adjustable thermostat, and is silent regarding the details of heater 41. However, the examiner gives official notice that merely downgrading the control of Vanselow cannot be regarded to patentably distinguish the claimed invention from the prior art, since it would have been obvious to modify the temperature control of Vanselow to have only two settings to reduce the cost and simplify the device. Gordon discloses a flexible heater "rolled into a hollow cylinder into which a baby bottle may be placed... A plastic housing may be provided" (column 5, lines 41-43), that is, in view of Vanselow, "located on the interior side of the coffee mug holder," as recited. It would therefore have been obvious to adapt the flexible heater of Gordon to the mug warmer of Vanselow, since Gordon discloses beverage warming to be an appropriate application.

#### *Response to Arguments*

8. Applicant's arguments filed 1/30/03 have been fully considered but they are not persuasive.

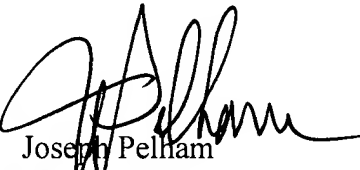
Applicant avers, at page 2, lines 4-6, that the Gordon patent, cited in combination with Vanselow as grounds of rejection for the "a flexible resistive type heater... on the interior side of the ...holder," "does not add to any suggestion as to the desirability of any modification of the references to describe the present invention." However, the examiner did not cite Gordon as suggesting a modification of Vanselow, but only to identify a heater type appropriate to heating individual beverage containers, about which Vanselow is completely silent. Vanselow identifies a heater 41 and its location but not its type; Gordon discloses that a flexible heater is appropriate to the heating of individual beverage containers (column 5, lines 41-45) at the time of the invention.

Also at page 2, lines 11-14, Applicant avers the lack of a suggestion to heat a mug "in a manner that flexibly retains the mug in firm mechanical contact. This is not recited in the claims.

#### *Conclusion*

9. The prior art cited on the PTO FORM 892, but not applied, is pertinent to the claimed invention. Applicant is urged to consider all cited prior art when replying to this action.

Any inquiry concerning communications from the Examiner should be directed to Joseph Pelham at (703) 308-1709; fax: 703-872-9302 (before final), 703-872-9303 (after final), 703-872-9301 (customer service).



Joseph Pelham  
Primary Patent Examiner  
Art Unit 3742

JMP  
April 14, 2003